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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

800 Data Base Access Tariffs  
and the 800 Service Management  
System Tariff

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CC Docket No. 93-129

REPLY TO OPPOSITIONS

U S WEST Communications, Inc. ("USWC"), through counsel, hereby submits its Reply to oppositions to its August 18, 1993, Petition for Clarification or, in the Alternative, Reconsideration.<sup>1</sup> USWC has requested that the Federal Communications Commission ("Commission") clarify that certain language in its 800 Data Base Order<sup>2</sup> did not constitute a final decision to the effect that the proprietary USWC Switching Cost Model ("SCM") needed to be disclosed to the public as part of USWC's tariff support material in this docket. If the Order was a final decision, reconsideration was requested.

In its opposition, Allnet complains that the USWC person responsible for managing the SCM has "no demonstrated expertise . . . regarding . . . cost support information," and thus is apparently disqualified from testifying as to the critical issue here -- whether the SCM is the proprietary trade

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<sup>1</sup>Oppositions were filed by Allnet Communication Services, Inc. ("Allnet"), and MCI Telecommunications Corporation ("MCI") on August 31, 1993, and September 1, 1993, respectively.

<sup>2</sup>In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket No. 93-129, Order Designating Issues for Investigation, DA 93-930, rel. July 19 1993 ("Order").

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secret of USWC.<sup>3</sup> That issue, however, has already been decided.<sup>4</sup> It would seem a bit strange if a Common Carrier Bureau tariff order could reverse a position which has been formally adopted by the full Commission and defended in court.

MCI, which claims to "feel[] . . . strongly about this point," states that USWC must either disclose the model or "provide some other justification for its rates."<sup>5</sup> MCI proclaims that, if such cost support is not sufficient, the "proposed tariffs must be rejected and sanctions imposed, if necessary."<sup>6</sup>

We profess some puzzlement on Allnet and MCI's position on this issue, which seems to imply that they have some sort of right to access USWC's confidential trade secrets and financial information because of their use in supporting a tariff. It is quite clear that tariff support information is submitted for the benefit of the Commission, and that customers such as Allnet and

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<sup>3</sup>Allnet at 2. The USWC affiant, Ms. Barbara H. Stock, because of her close work with the cost model itself, is relied on by USWC in applying the model to vendor-proprietary information to determine costs.

<sup>4</sup>See In the Matter of Allnet Communications Services, Inc., Freedom of Information Act Request, FOIA Control No. 92-149, Memorandum Opinion and Order, FCC 93-386, rel. Aug. 17, 1993. See also In the Matter of Allnet Communication Services, Inc., Freedom of Information Act Request, 7 FCC Rcd. 6329 (1992); Allnet Communication Services, Inc. v. F.C.C., 800 F. Supp. 984 (D.D.C. 1992), appeal pending, No. 92-5351 (D.C. Cir. Sept. 25, 1992).

<sup>5</sup>MCI at 3.

<sup>6</sup>Id.

MCI have no right to obtain such information -- even if the Commission relies on it. As the Commission has long held:

[T]he requirements of Section 61.38 are not intended to charter independent tariff oversight by third parties. This section exists primarily to assist the Commission in exercising its discretion whether to suspend and investigate proposed tariffs, rather than to confer "important procedural benefits upon individuals."<sup>7</sup>

Even in an actual tariff investigation following designation, there is no requirement that the Commission grant to competitors of a carrier unrestricted access to the filing carrier's trade secrets and financial information.<sup>8</sup>

USWC can, if necessary, submit less than optimal cost information in support of its tariffs while retaining the cost model in confidence (as MCI suggests). But such an approach would seem counterproductive from the Commission's perspective, as the Commission would be deprived of an opportunity to make a decision based on the best possible information. But there is nothing in the Communications Act which requires the Commission to use inferior information or that requires carriers to divulge their trade secrets to the public in a tariff proceeding. The best way to proceed is for the Commission to accept the SCM in

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<sup>7</sup>In the Matter of Amendment of Section 61.38 of the Commission's Rules, 94 F.C.C. 2d 1107, 1109 (1983), citing Aeronautical Radio, Inc. v. FCC, 642 F.2d 1221, 1235 (D.C. Cir. 1980), quoting American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 538 (1970). See also In the Matter of AT&T Communications Tariff F.C.C. Nos. 9, 10 and 11, 103 F.C.C. 2d 77, 93 n.29 (1985).

<sup>8</sup>Indeed, Allnet Communications Services Inc., 7 FCC Rcd. 6329 ¶ 2, supra, involved a formal tariff investigation.

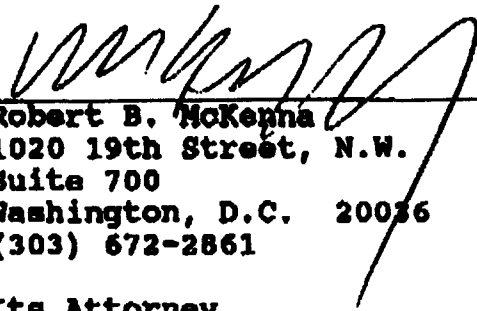
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confidence, and release it to others only pursuant to a protective order. This approach will properly protect the rights of all parties. Neither Allnet nor MCI have said anything which alters this fundamental conclusion.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By:

  
Robert B. McKenna  
1020 19th Street, N.W.  
Suite 700  
Washington, D.C. 20036  
(303) 672-2861

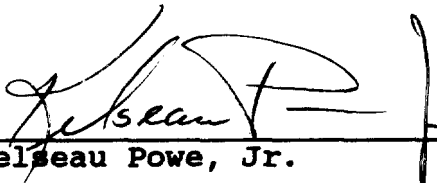
Its Attorney

Of Counsel,  
Laurie J. Bennett

September 14, 1993

**CERTIFICATE OF SERVICE**

I, Kelseau Powe, Jr., do hereby certify that on this 14th day of September, 1993, I have caused a copy of the foregoing **REPLY TO OPPOSITIONS** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.

  
Kelseau Powe, Jr.

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**\*Via Hand-Delivery**  
(CC93-129/BM/lh)

\*Tariff Division  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Christopher J. Frentrop  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Kathleen B. Levitz  
Federal Communications Commission  
Room 500  
1919 M Street, N.W.  
Washington, DC 20554

\*Colleen Boothby  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Gregory J. Vogt  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Mark Uretsky  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Judith A. Nitsche  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Kathleen Abernathy  
Federal Communications Commission  
Room 826  
1919 M Street, N.W.  
Washington, DC 20554

\*Steven Funkhouser  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Peggy Reitzel  
Federal Communications Commission  
Room 544  
1919 M Street, N.W.  
Washington, DC 20554

\*Gary Phillips  
Federal Communications Commission  
Room 544  
1919 M Street, N.W.  
Washington, DC 20554

William A. Blase, Jr.  
Southwestern Bell  
Suite 1000  
1667 K Street, N.W.  
Washington, DC 20006

\*Tom Quaile  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

Gail L. Polivy  
GTE Service Corporation  
Suite 1200  
1850 M Street, N.W.  
Washington, DC 20036

\*International Transcription  
Services  
Suite 140  
2100 M Street, N.W.  
Washington, DC 20037

Roy L. Morris  
Allnet Communication Services  
Suite 500  
1990 M Street, N.W.  
Washington, DC 20036

James P. Tuthill  
Betsy S. Granger  
Theresa L. Cabral  
Nancy C. Woolf  
Pacific/Nevada Bell  
Room 1525  
140 New Montgomery Street  
San Francisco, CA 94105

Jay C. Keithley  
United Telephone Companies  
Suite 1100  
1850 M Street, N.W.  
Washington, DC 20036

James L. Wurtz  
Pacific/Nevada Bell  
1275 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Craig T. Smith  
United Telephone Companies  
P.O. Box 11315  
Kansas City, MO 64112

Cindy Z. Schonhaut  
Metropolitan Fiber Systems, Inc.  
Suite 300  
3000 K Street, N.W.  
Washington, DC 20007

Carol R. Schultz  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, N.W.  
Washington, DC 20006

James B. Gainer  
Ann Henkener  
PUC of Ohio  
180 East Broad Street  
Columbus, OH 43266

Henry D. Levine  
Mary K. O'Connell  
Levine, Lagapa & Block  
Suite 602  
1200 Nineteenth Street, N.W.  
Washington, DC 20036

Joseph P. Markoski  
David Alan Nall  
Kerry E. Murray  
Squire, Sanders & Dempsey  
P.O. Box 407  
201 Pennsylvania Avenue, N.W.  
Washington, DC 20044

Mitchell F. Brecher  
Terri B. Natoli  
Donelan, Cleary, Wood & Maser, P.C.  
Suite 850  
1275 K Street, N.W.  
Washington, DC 20005-4078

Ward W. Wueste, Jr.  
Richard McKenna  
GTE Service Corporation  
P.O. Box 152092  
Irving, TX 75015-2092

Francine J. Berry  
R. Steven Davis  
American Telephone and Telegraph  
Company  
Room 3244J1  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Alfred Winchell Whittaker  
Kirkland & Ellis  
Suite 1200  
655 Fifteenth Street, N.W.  
Washington, DC 20005

Leon M. Kestenbaum  
Norino T. Moy  
Sprint Communications Company  
Suite 1110  
1850 M Street, N.W.  
Washington, DC 20036



Genevieve Morelli  
Competitive Telecommunications  
Association  
Suite 220  
1140 Connecticut Avenue, N.W.  
Washington, DC 20036

David S. Torrey  
Patrick A. Lee  
New England Telephone and Telegraph  
Company and New York Telephone  
Company  
120 Bloomingdale Road  
White Plains, NY 10605

Danny E. Adams  
Jeffrey S. Linder  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, DC 20006

Jeffrey W. Reynolds  
Sugar Land Telephone  
14141 Southwest Freeway  
Sugar Land, TX 77487

Catherine R. Sloan  
LDDS Communications, Inc.  
Suite 400  
1825 Eye Street, N.W.  
Washington, DC 20006

M. E. King, Jr.  
Nevada Bell  
Room B-132  
645 East Plumb Lane  
P.O. Box 11010  
Reno, NV 89520

Andrew D. Lipman  
Richard M. Rindler  
Swidler & Berlin, Chartered  
Suite 300  
3000 K Street, N.W.  
Washington, DC 20007

John C. Litchfield  
Ameritech Services  
Location 4F08  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025

Eric Fishman  
Sullivan & Worchester  
1025 Connecticut Avenue, N.W.  
Washington, DC 20036

Ronald W. Barkby  
Centel Telephone Companies  
8745 West Higgins Road  
Chicago, IL 60631

Robert A. Mazer  
Nixon, Hargrave, Devans & Doyle  
Suite 800  
One Thomas Circle  
Washington, DC 20005

Bob F. McCoy  
Joseph W. Miller  
John C. Gammie  
P.O. Box 2400-Suite 3600  
One Williams Center  
Tulsa, OK 74102

Richard A. Askoff  
National Exchange Carrier  
Association  
100 South Jefferson Road  
Whippany, NJ 07981

Michael L. Glaser  
Hopper & Kanouff, P.C.  
Suite 200  
1610 Wynkoop  
Denver, CO 80202

Emmanuel Staurulakis  
John Staurulakis, Inc.  
6315 Seabrook Road  
Seabrook, MD 20706

William Page Montgomery  
Economics and Technology, Inc.  
One Washington Mall  
Boston, MA 02108-2603

Randall B. Lowe  
Jones, Day, Reavis & Pogue  
1450 G Street, N.W.  
Washington, DC 20005-2088

Heather Burnett Gold  
Association for Local Tele-  
communications Services  
Suite 1050  
1150 Connecticut Avenue  
Washington, DC 20036

James S. Blaszak  
Francis E. Fletcher, Jr.  
Gardner, Carton & Douglas  
Suite 900 - East Tower  
1301 K Street, N.W.  
Washington, DC 20005

Alltel Corporation  
One Allied Drive  
Little Rock, AR 72202

Century Telephone Company  
P.O. Drawer 340  
Beaux Bridge, LA 70517

Elkhart Telephone Company  
P.O. Box 817  
Elkhart, KS 67950-0817

Chillicothe Telephone Company  
68 East Main Street  
P.O. Box 480  
Chillicothe, OH 45601-0647

Farmers Telephone Cooperative, Inc.  
180 North McCurdy Avenue  
P.O. Box 217  
Rainsville, AL 35986

Cincinnati Bell Telephone Company  
Room 310  
201 East Fourth Street  
P.O. Box 2301  
Cincinnati, OH 45202

Fidelity Telephone Company  
64 North Clark  
Sullivan, MO 63080

Citizens Utilities Companies  
High Ridge Park  
Stamford, CT 06905

Great Plains Communications, Inc.  
1626 Washington Street  
Blair, NE 68008

Dunkirk and Fredonia Telephone  
Company  
40 Temple Street  
P.O. Box 209  
Fredonia, NY 14063

Hargray Telephone Company  
P.O. Box 5519  
Hilton Head Island, SC 29938

Illinois Consolidated Telephone  
Company  
121 South 17th Street  
Mattoon, IL 61938

Northwestern Indiana Telephone  
Company  
205 North Washington Street  
P.O. Box 67  
Hebron, IN 46341

La Fourche Telephone Company, Inc.  
P.O. Box 188  
La Rose, LA 70373

Pineland Telephone Cooperative  
P.O. Box 678  
Metter, GA 30439

Lufkin-Conroe Telephone Exchange  
P.O. Box 909  
Lufkin, TX 75901

Josephine S. Trubek  
Rochester Telephone Corporation  
180 South Clinton Avenue  
Rochester, NY 14646-0700

Millington Telephone Company, Inc.  
4880 Navy Road  
Drawer 429  
Millington, TN 38083

Roseville Telephone Company  
P.O. Box 969  
Roseville, CA 95661

Mount Horeb Telephone Company  
200 East Main Street  
P.O. Box 65  
Mount Horeb, WI 53572

Taconic Telephone Corporation  
Taconic Place  
Chatham, NY 12037

Alan Y. Naftalin  
Charles R. Naftalin  
Koteen & Naftalin  
1150 Connecticut Avenue, N.W.  
Washington, DC 20036

Union Telephone Company  
P.O. Box 428  
Plain Dealing, LA 71064

Vista Telephone Company  
14450 Burnhaven Drive  
Burnsville, MN 55337

Vista-United Telecommunications  
P.O. Box 10180  
Lake Buena, FL 32830-0180

Warwick Valley Telephone Company  
Warwick Communications  
5506 Detroit Avenue  
Cleveland, OH 44102